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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,783	09/28/2001	Stanko Bodnar	CRD-0967	5435

27777 7590 05/14/2007

PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NJ 08933-7003

EXAMINER	
CHORBAJI, MONZER R	

ART UNIT	PAPER NUMBER
1744	

MAIL DATE	DELIVERY MODE
05/14/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/966,783	BODNAR ET AL.	
	Examiner	Art Unit	
	MONZER R. CHORBAJI	1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 February 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-40* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *28 September 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This final action is in response to the amendment/arguments submitted on 02/12/2007

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1 and 20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In claim 1, line 16; Applicant added the word "separate". The disclosure teaches a series of vacuum and nitrogen washes, but not separate vacuum and nitrogen washes. For example, see page 63, numbered lines 9-17.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-10 and 20-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muth et al (U.S.P.N. 5,472,702) in view of McGowan, Jr. (U.S.P.N. 5,749,203), Popescu et al (U.S.P.N. 5,464,580) and Mitchell (EP 0 568 310) as further evidenced by Sigma-Aldrich (biocompare.com Internet printout).

Regarding claims 1 and 20, Muth teaches the following: positioning packaged (col.1, lines 19-24, col.2, lines 24-26 and col.5, lines 5-9), drug coated medical device such that the drug contains an anti-proliferative agent (col.4, lines 40-42 and the specification on page 15 teaches that an example of anti-proliferative agents are antibiotics) in a sterilization chamber (col.7, line 38), increasing and maintaining the temperature in the sterilization chamber in the range from 25-35 degrees Celsius and the relative humidity in the range from 40%-85% for a predetermined time period (col.6,

lines 43-46), injecting a sterilization agent at a predetermined concentration into the chamber and maintaining the temperature in the range from 25-35 degrees Celsius and the relative humidity in the range from 40%-85% for a predetermined time period (col.7, table, lines 54-59) and removing the sterilization agent from the chamber through a plurality of separate vacuum washes over another predetermined time period by maintaining the chamber at a temperature in the range of 30-40 degree Celsius (col.7, table, Exhaust, lines 66-67 and col.8, lines 1-2). Muth does not specifically teach the following: applying another preconditioning step, creating a vacuum, using separate nitrogen washing steps and the use of rapamycin. McGowan teaches that preconditioning medical articles is known in the art of ethylene sterilization (col.1, lines 26-27 and lines 36-44). McGowan further teaches that creating a vacuum (col.1, lines 52-64) and applying nitrogen rinses (col.2, lines 12-14) are also conventional steps in such an art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Muth method by including an additional preconditioning step since at elevated temperatures ethylene oxide gas is thought to be more molecularly active and therefore performs more effectively as a sterilizing agent as taught by McGowan (col.1, lines 36-40).

McGowan does not specifically teach applying separate nitrogen washing steps. Popescu sterilizes medical items with ethylene oxide and further teaches of removing residual ethylene gas by separately adding nitrogen gas then evacuating the chamber (col.6, lines 20-33) since this approach results in the substantial removal of toxic ethylene oxide gas from sterilized medical items (col.6, lines 12-15). Therefore, it would

have been obvious to one of ordinary skill in the art at the time the invention was made to further add separate nitrogen washing steps to Muth's as taught by Popescu since the combination of separate nitrogen adding steps and separate vacuuming steps result in the substantial removal of toxic ethylene oxide gas from sterilized medical items (Popescu, col.6, lines 12-15).

As to the limitation that the drug coated on the medical device comprises a compound that inhibits mTOR and binds FKBP12 in claims 1-20, Muth discloses a method of sterilizing drug coated medical devices; however, it is unclear whether the drugs in Muth include a compound that inhibits mTOR and binds FKBP12. Mitchell teaches it is known in the art to provide drug coated medical devices with a compound such as rapamycin in order to treat patients with vascular disease. The ability of Rapamycin to inhibit mTOR and to bind to FKBP12 is an inherent property as evidenced by the Sigma-Aldrich Internet printout. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Muth method by sterilizing a drug coated medical device where the drug includes the compound in order to treat patients with vascular disease and further since rapamycin is known to inhibit transplantation rejection in mammals (page 3, numbered lines 12-13) making organ donations safer for recipients.

Regarding claims 3, 7, 10, 28 and 31, Muth teaches the following: the first predetermined period is three hours (col.6, lines 45-46), removing the sterilant from the packaged drug coated medical device (col.7, table, exhaust) and a biocompatible vehicle or coating that includes an agent in therapeutic dosages (col.8, lines 27-31).

Regarding claims 2, 4-6, 8-9, 21, 23-27 and 29-30, McGowan teaches the following: reducing the pressure in the chamber to under 10 kPa (col.10, lines 37-45), injecting gaseous ethylene oxide at a concentration from 200-1200 mg/l over a second predetermined period of 6 hours (col.2, lines 5-9), injecting ethylene oxide at a concentration from 800-950 mg/l over a second predetermined period of 6 hours (col.2, lines 5-9), removing the sterilant through a series of alternating vacuum and nitrogen injection stages over a third predetermined period from 2-48 hours (col.2, lines 12-14 and lines 60-65), removing the packaged drug coated medical device from the chamber and positioning it in a controlled environment (col.2, lines 18-22), circulating ambient air (col.2, lines 13-14), maintaining the temperature from 10-70 degrees Celsius (col.2, lines 21-22) over time period from 1hour-2 weeks (col.2, lines 64-65) or over time period from 12 hours-7 days (col.2, lines 64-65) and placing the packaged drug coated medical device in a preconditioning chamber (col.1, line 27) then maintaining the temperature from 10-70 degrees Celsius (col.1, lines 31-32) and the relative humidity from 20%-95% (col.1, lines 32-33) over a time period of 1 hour-5 days (col.1, lines 34-35).

Regarding claim 22, Muth, McGowan and Mitchell all do not specifically disclose a temperature range and a time interval as recited in the claim. Both Muth and McGowan disclose a relative humidity range value that falls within the recited range, for example, McGowan teaches preconditioning at a relative humidity from 40%-80% (col.1, lines 31-32). Popescu teaches preconditioning at 25 degree Celsius for a time period from 60-90 minutes (col.5, lines 24 and 35-36). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Muth

method by adjusting the temperature range and the exposure time interval since such modifications is a matter of optimization as evidenced by Popescu.

8. Claims 11-13 and 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muth et al (U.S.P.N. 5,472,702) in view of McGowan, Jr. (U.S.P.N. 5,749,203), Popescu et al (U.S.P.N. 5,464,580), Mitchell (EP 0 568 310) as further evidenced by Sigma-Aldrich (biocompare.com Internet printout) as applied to claims 10 and 20 and further in view of Rich (U.S.P.N. 6,025,414) and Pharriss et al (U.S.P.N. 3,675,647).

Regarding claims 11-12 and 32-34, Muth, McGowan, Popescu and Mitchell all do not specifically teach using the polymers poly (ethylene-co-vinyl acetate) and polybutylmethacrylate as coating material. Rich teaches that poly (ethylene-co-vinyl acetate) is incorporated into layers of implants (col.3, lines 36-37 and col.4, line 10). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify composition of the medical devices coated in Muth to include the polymer poly (ethylene-co-vinyl acetate) as taught by Rich since it is known for it resiliency (col.4, lines 2-3).

Regarding claims 11-12 and 32-33, Rich fails to teach using the polymer polybutylmethacrylate. Pharriss teaches using polybutylmethacrylate (col.3, line 63). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify composition of the implants in Rich to include the polymer polybutylmethacrylate as taught by Pharriss since it is known to be biologically acceptable flexible, resilient, polymeric material (col.3, lines 59-60).

Regarding claims 13 and 34, Muth teaches incorporating the agent into the first layer (col.8, lines 28-30).

9. Claims 14-19 and 35-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muth et al (U.S.P.N. 5,472,702) in view of McGowan, Jr. (U.S.P.N. 5,749,203), Popescu et al (U.S.P.N. 5,464,580), Mitchell (EP 0 568 310) as further evidenced by Sigma-Aldrich (biocompare.com Internet printout) as applied to claims 10, 20 and further in view of Gingras (WO 00/38754).

Regarding claims 14-19 and 35-40, Muth, McGowan, Popescu and Mitchell all do not specifically teach incorporating polyfluoro copolymers made up of first moiety and second moiety into medicated medical devices. Gingras teaches combining various biocompatible polyfluoro copolymers with polyfluoro monomers (page 10, lines 5-10) in coating layers for stent such that the coating layers are made of first and second moieties that is intrinsically combined in various concentration ranges. Also, Gingras the use of hexafluoropropylene (page 10, line 10). As a result, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify composition of the coatings for medical devices in Muth to include hexafluoropropylene as taught by Gingras since such a compound is known to be biocompatible (page 10, line 5).

Response to Arguments

10. Applicant's arguments filed on 02/12/2007 have been fully considered but they are not persuasive.

On pages 12-13 of the Remarks/Arguments section, Applicant arguments are directed toward amended independent claims 1 and 20 where none of the references of record teach removing the sterilizing agent through separate vacuum and nitrogen washing steps.

Muth teaches performing separate vacuuming steps as shown in the Table in column 7 in order to remove residual ethylene oxide. As to the limitation of performing separate nitrogen washing steps, now Popescu is combined with Muth, McGowan, Mitchell and sigma-Aldrich for its teaching of removing residual ethylene gas by separately adding nitrogen gas then evacuating the chamber (col.6, lines 20-33) since this approach results in the substantial removal of toxic ethylene oxide gas from sterilized medical items (col.6, lines 12-15).

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

12. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R. CHORBAJI whose telephone number is (571) 272-1271. The examiner can normally be reached on M-F 9:00-5:30.

14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, GLADYS J. CORCORAN can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MRC

GLADYS JP CORCORAN
SUPERVISORY PATENT EXAMINER